AFR

HIGH COURT OF CHHATTISGARH BILASPUR

M. A. (C) No. 532 of 2014

The Oriental Insurance Co. Ltd. Through its Divisional Manager, Divisional Office, 1st Floor, Rama Trade Centre, Near Bus Stand, Bilaspur, Revenue and Civil District Bilaspur, Chhattisgarh, PIN 495001**.**

---- Appellant

Versus

1. Jugeshwari W/o Ishwar, Ram Aged About 68 Years, Occupation Housekeeping.
2. Ishwar Ram S/o Surjan Ram, Aged About 73 Years, Occupation House Keeping.
3. Keshwar Ram S/o Ishwar Ram, Aged About 38 Years, Occupation Agriculturist.
4. Bhagmaniya W/o Tomsai, Aged About 43 Years, Occupation Housekeeping.
5. Ramkumar S/o Tomsai, Aged About 32 Years.
6. Prem Kumari D/o Tomsai, Aged About 27 Years, Occupation Housekeeping.
7. Gharbharan S/o Tomsai, Aged About 25 Years.
8. Komalram S/o Tomsai, Aged About 21 Years.
   All the respondents No.1 to 8 R/o Village Birpur, P.S. Jainagar, Tahsil Surajpur, District : Surguja, Chhattisgarh.
9. Smt. Dhana Devi W/o Vishnu Narayan, C/o Shri Manikchand Singh, R/o Namnakala, Ambikapur, District Surguja, Chhattisgarh.

---- Respondents

For Appellant	: Shri R.N. Pusty, Advocate
For Respondents No.1 to 8	: Shri Ashok Kumar Shukla, Advocate
For Respondent No.9	: None

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per Parth Prateem Sahu, Judge

07.10.2020

1. Appellant/non-applicant No.2/Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988

(hereinafter referred to as 'M.V. Act') challenging the award dated 03.01.2014 passed by the Motor Accident Claims Tribunal Surajpur, District Surajpur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.52 of 2002 whereby learned Claims Tribunal allowed the claim application in part and awarded a sum of Rs.6,24,000/- as compensation in a death case.

2. Facts relevant for disposal of this appeal, are that, on 06.03.2001, Tomsai was travelling on a Jeep bearing No.UP-63/A/9563 (hereinafter referred to as 'offending vehicle') and returning to his home. On the way, offending vehicle met with an accident near Kalighat Temple on account of rash and negligent driving of its driver. In the aforementioned accident, Tomsai suffered grievous injuries over his person, he was taken to Mission Hospital, Ambikapur where during the course of treatment, he died.

3. The claimants, who are widow and children of deceased Tomsai filed claim application under Section 166 of the M.V. Act before the learned Claims Tribunal claiming a sum of Rs.20,00,000/- as compensation on account of untimely motor accidental death of Tomsai.

4. Non-applicant No.1/owner of offending vehicle submitted reply to claim application denying the pleadings made therein, pleaded that offending vehicle is a private vehicle i.e. Jeep, it was not used for carrying passengers and if offending vehicle

is being used as 'passenger carrying vehicle' along with deceased, number of other passengers could have suffered injuries. It was further pleaded that offending vehicle was sent for repairing to a garage as she wanted to travel on the said vehicle to Mirzapur (her house) and driver of offending vehicle without her permission took the vehicle to Kamalpur (his own house) from Ambikapur. It was lastly pleaded that she is not aware as to how Tomsai died in the accident from her vehicle.

5. Non-applicant No.2/Insurance Company submitted reply to claim application, while denying the pleadings made in the claim application pleaded that Tomsai was travelling as a passenger in the offending vehicle upon paying fare, offending vehicle was insured as a 'private vehicle'. Insurance policy was issued with a condition that the vehicle to be driven by the licensed person under the permit only as she permitted to carry passengers; deceased was travelling as a fare paying passenger; there was no permit to carry passengers and driver of offending vehicle was not possessing valid and effective driving licence to drive the vehicle. There was breach of policy conditions. It was also pleaded that in another Claim Case bearing No.68 of 2001, wherein one Smt. Sarla Singh was implicated as owner of the vehicle, upon verification, the licence number possessed by Vijay Burman has been stated to be not issued from the Regional Transport Office, Varanasi.

6. On appreciation of the pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal has initially passed an award on 21.10.2003, in which, application filed by the claimants was allowed in part, Rs.6,24,000/- was awarded as compensation and liability was fastened upon the Insurance Company to satisfy the amount of compensation.

7. Appellant/Insurance Company had challenged the award passed in Claim Case Nos.52 of 2002 and 35 of 2002 before this Court by filing M. A. Nos.134 of 2004 and 135 of 2004, respectively. After hearing the respective parties in aforementioned appeals, High Court considered the submissions made by learned counsel for the respective parties therein and also the fact that issue with regard to holding of valid and effective driving licence by its driver was not framed, the case was remitted back vide order dated 25.03.2011 for deciding the issue whether the driver of offending vehicle was possessing valid and effective driving licence to drive the offending vehicle and thereafter, to decide the liability of satisfying the amount of compensation.

8. After receiving back the case on remand, learned Claims Tribunal has passed the impugned award and held that Insurance Company has failed to prove that licence possessed by Vijay Burman/driver of offending vehicle was not a valid licence and taking into consideration Ex.A/6 held that on the

date of accident, Vijay Burman was possessing valid and effective driving licence. The breach of policy conditions was not found to be proved and fixed the liability to satisfy the amount of compensation upon non-applicant No.2/Insurance Company.

9. Shri R.N. Pusty, learned counsel for the appellant/Insurance Company submits that learned Claims Tribunal erred in not considering entire evidence and material available on record with regard to the licence. He further submits that appellant/Insurance Company has filed an application on 17.12.2013 for granting an opportunity to examine the witness of Regional Transport Office, Varanasi, but the said application was not considered, which is contrary to the direction issued by this Court in remand order. It is contended that offending vehicle was registered as 'private vehicle', insurance policy was issued for a 'private vehicle', which was admitted by non-applicant No.1/owner of offending vehicle, but on the date of accident, deceased was travelling as 'fare paying passenger', hence, there was breach of conditions of insurance policy. It is pointed out that there was no coverage of the risk of deceased, who was travelling as a 'passenger'. He lastly argued that in a private vehicle, only family members of insured can travel apart from the insured herself. The claimants have failed to show any relation of deceased with insured/owner of offending vehicle, hence, the risk of the deceased was not covered.

10. Per contra, Shri Ashok Kumar Shukla, learned counsel for respondents No.1 to 8/claimants submits that learned Claims Tribunal upon appreciation of evidence placed on record by the respective parties has arrived at a correct finding/conclusion. He further submits that learned Claims Tribunal has given opportunity to the appellant/Insurance Company to examine the witness in its behalf in pursuance to the direction issued by this Court in remand order and fixed the case for recording of evidence on 10.12.2013. This order was passed in a proceeding dated 08.11.2013. More than one month was given to the respective parties for producing their evidence, but appellant/Insurance Company has not made any effort to get any witness examined. In fact, learned counsel appearing for Insurance Company before learned Claims Tribunal has submitted that they do not want to examine any witness. It is contended that offending vehicle was admittedly registered as 'private vehicle', there was an evidence available on record that when the driver of offending vehicle was driving alone, he found that deceased was travelling on bicycle along with his friend and he asked the deceased if he wanted to travel in his vehicle he may join and this is how, deceased became occupant of the vehicle and not as a passenger. There is no material to show that offending vehicle was being used as 'passenger carrying vehicle' and deceased was travelling as a 'fare paying passenger' in the said vehicle. No evidence has

been placed on record in this regard. It is lastly contended that under the insurance policy, risk of deceased was also covered.

11. We have heard learned counsel for the respective parties and perused the record carefully.

12. Initially, learned Claims Tribunal has passed the impugned award deciding the claim application bearing No.52 of 2002 vide its award dated 21.10.2003, which was put to challenge by the Insurance Company before High Court in M. A. No.134 of 2004, which came to be decided on 25.03.2011. Division Bench of this Court while remanding the case back to learned Claims Tribunal, has directed the learned Claims Tribunal to frame an additional issue with regard to whether on the date of accident, driver of offending vehicle was driving the vehicle with a valid and effective driving licence or not.

13. Going by the proceedings drawn by learned Claims Tribunal after getting back the case on remand, after issuing notice to respective parties, additional issue with regard to valid and effective driving licence was framed on 08.11.2013. Learned Claims Tribunal has fixed the case on 10.12.2013 for evidence of respective parties. On 10.12.2013, learned counsel for the appellant/Insurance Company appearing before learned Claims Tribunal submitted that they do not want to produce any evidence with regard to additional issue and the case was fixed for final argument on 17.12.2013. On 17.12.2013, it was recorded that parties have sought time for final argument and

accordingly, case was fixed for 02.01.2014, on which date, case was finally heard and award was passed on 03.01.2014. In a proceeding recorded by learned Claims Tribunal on 17.12.2013, there is no mention of filing of an application by counsel for Insurance Company before learned Claims Tribunal. They have not challenged the proceeding recorded by learned Claims Tribunal on 17.12.2013 to be not correctly drawn, but they have simply placed on record of this appeal at page No.17 to show that appellant/Insurance Company has moved an application for granting opportunity to examine witness, an employee of Regional Transport Office, Varanasi.

14. In view of proceedings recorded by learned Claims Tribunal in aforementioned order-sheets, we cannot accept the submission made by learned counsel for the appellant/ Insurance Company that application filed for examining the witness was not considered by learned Claims Tribunal as filing of application itself is not appearing in the order-sheet recorded by learned Claims Tribunal and the said order was not challenged.

15. Apart from above, going by the earlier proceedings also, learned Claims Tribunal has allowed the prayer made by Insurance Company before learned Claims Tribunal for issuance of notice to its witnesses on 30.09.2002. In order-sheet dated 28.03.2003, learned Claims Tribunal has recorded that prayer made by learned counsel for the Insurance

Company for granting time to examine Regional Transport Officer, Varanasi as witness, apart from other witnesses, Tribunal has recorded that upon depositing expenses of Rs.5,500/-, notice be issued to Regional Transport Officer, Varanasi. The Insurance Company has not deposited the amount of expenses as directed for calling Regional Transport Officer, Varanasi as witness. Even after order of remand passed by this Court, appellant/Insurance Company has not taken any step to examine the witness in support of their case to proof that on the date of accident, driver of offending vehicle was not possessing valid and effective driving licence to drive the offending vehicle, in fact, learned counsel appearing before Tribunal for the appellant/Insurance Company has stated that they do not want to give any evidence.

16. In view of aforementioned facts and circumstances of the case and the material available on record as also the submission of learned counsel for the appellant/Insurance Company that appellant/Insurance Company was not granted proper opportunity to lead evidence cannot be accepted. This submission being contrary to record, is repelled.

17. So far as the next ground with regard to insurance of private vehicle for carrying passengers is concerned, claimants have examined one Gopal Ram as AW-2, for whom deceased was working and manufacturing the doors. He stated that Tomsai along with Gopal Ram travelled to Ambikapur on bicycle for

purchasing door fittings, when they were returning, on the way, Vijay Burman who was driving the offending vehicle met Gopal Ram and deceased and asked the deceased to travel along with him in offending vehicle if he wants. On this, Tomsai rided the offending vehicle and went along with Vijay Burman. After travelling to some extent, offending vehicle met with an accident. Gopal Ram reached to the place of occurrence after some time. There is no evidence available on record to show that the deceased was travelling as 'fare paying passenger' or on the date of accident, offending vehicle was being used as a 'passenger carrying vehicle'. Appellant/Insurance Company has not brought any evidence or material on record nor it is pointed out before this Court to substantiate the submission/ground that offending vehicle was being used as a 'passenger carrying vehicle'. In view of above, this submission is also not sustainable.

18. So far as the other ground raised by learned counsel for the appellant/Insurance Company that there was no coverage of the deceased under the insurance policy is concerned, we have perused the insurance policy (Ex.NA3-1). Perusal of insurance policy would show that it was a 'Private Car (Zone A) Policy B Comprehensive' and even the premium was charged for nine passengers. Upon asking the nature of policy by learned counsel for the appellant/Insurance Company, he

admits that the insurance policy issued for offending vehicle was a 'Comprehensive Policy'.

19. The issue with regard to coverage of the risk of occupants of vehicle under comprehensive policy whether covered or not has been decided in case of **National Insurance Company Limited v. Balakrishnan and Another** reported in **(2013) 1 SCC 731**, wherein Hon'ble Supreme Court while considering its earlier judgments as also the circulars issued in this regard, has held thus :

> “21. At this stage, it is apposite to note that when the decision in *Bhagyalakshmi v. United Insurance Co. Ltd., (2009) 7 SCC 148* was rendered, a decision of High Court of Delhi dealing with the view of the Tariff Advisory Committee in respect of “comprehensive/package policy” had not come into the field. We think it apt to refer to the same as it deals with certain factual position which can be of assistance. The High Court of Delhi in *Yashpal Luthra v. United India Insurance Co. Ltd., 2011 ACJ 1415 (Del),* after recording the evidence of the competent authority of Tariff Advisory Committee (TAC) and Insurance Regulatory and Development Authority (IRDA), reproduced a circular dated 16.11.2009 issued by IRDA to CEOs of all the Insurance Companies restating the factual position relating to the liability of Insurance companies in respect of a pillion rider on a

two-wheeler and occupants in a private car under the comprehensive/ package policy.

22. The relevant portion of the circular which has been reproduced by the High Court is as follows : *(Yashpal Luthara case, ACJ pp.1419-20, para 20)*

> “INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY
>
> Ref: IRDA/NL/CIR/F&U/073/11/2009
>
> Dated: 16-11-2009
>
> To,
>
> CEOs of all general insurance companies
>
> Re: Liability of insurance companies in respect of occupants of a Private car and pillion rider on a two-wheeler under Standard Motor Package Policy (also called 'the Comprehensive Policy').
>
> Insurers’ attention is drawn to wordings of Section (II) 1 (ii) of Standard Motor Package Policy (also called 'the Comprehensive Policy') for private car and two-wheeler under the (erstwhile) India Motor Tariff (IMT). For convenience the relevant provisions are reproduced hereunder:-
>
> ‘Section II - Liability to Third Parties
>
> (1) Subject to the limits of liabilities as laid down in the Schedule hereto the company will indemnify the insured in the event of an accident caused by or arising out of the use of the insured vehicle against all sums which the insured shall become legally liable to pay in respect of-

(i) death or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of employment of such person by the insured.'

It is further brought to the attention of insurers that the above provisions are in line with the following circulars earlier issued by the TAC on the subject:

(i) Circular M.V. No. I of 1978 dated 18-3-1978 (regarding occupants carried in Private Car) effective from 25-3-1977.

(ii) MOT/GEN/10 dated 26-6-1986 (regarding pillion riders on a two-wheeler) effective from the date of the circular.

The above circulars make it clear that the insured liability in respect of occupant(s) carried in a private car and pillion rider carried on two-wheeler is covered under the Standard Motor Package Policy. A copy each of the above circulars is enclosed for ready reference.

The Authority vide circular No. 066/IRDA/F&U/Mar-08 dated 26-3-2008 issued under File & Use Guidelines has reiterated that pending further orders

> the insurers shall not vary the coverage, terms and conditions wording, warranties, clauses and endorsements in respect of covers that were under the erstwhile tariffs. *Further the Authority, vide circular No. 019/IRDA/NL/F&U/Oct-08 dated 6-11-2008 has mandated that insurers are not permitted to abridge the scope of standard covers available under the erstwhile tariffs beyond the options permitted in the erstwhile tariffs. All general insurers are advised to adhere to the aforementioned circulars and any non-compliance of the same would be viewed seriously by the Authority.* This is issued with the approval of competent authority.
>
> Sd/-
> (Prabodh Chander)
> Executive Director"
>
> (emphasis supplied)

23. The High Court has also reproduced a circular issued by IRD dated 3.12.2009. It is instructive to quote the same : (*Yashpal Luthra cas*e, ACJ pp.1422-23, para 23)

> "INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY
>
> Ref. IRDA/NL/CIR/F&U/078/12/2009
>
> Dated: 3-12-2009.
>
> To,
>
> All CEOs of All general insurance companies (except ECGC, AIC, Staff Health, Apollo)

Re: Liability of insurance companies in respect of occupant of a private car and pillion rider in a two-wheeler under Standard Motor Package Policy (also called 'the Comprehensive Policy').

Pursuant to the order of the Delhi High Court dated 23.11.2009 *Yashpal Luthra* (supra), the Authority convened a meeting on 26-11-2009 of the CEOs of all the general insurance companies doing motor insurance business in the presence of the counsel appearing on behalf of the Authority and the leaned amicus curiae.

Based on the unanimous decision taken in the meeting by the representatives of the general insurance companies to comply with the IRDA circular dated 16-11-2009 restating the position relating to the liability of all the general insurance companies doing motor insurance business in respect of the occupants in a private car and pillion rider on a two wheeler under the comprehensive/ package policies which was communicated to the court on the same day i.e. 26-11-2009 and the court was pleased to pass the order (dated 26.11.2009) received from the Court Master, Delhi High Court, is enclosed for your ready reference and adherence. *In terms of the said order and the admitted liability of all the general insurance companies doing motor insurance business in respect of the occupants in a private car and pillion rider on a two-*

wheeler under the comprehensive/ package policies, you are advised to confirm to the Authority, strict compliance with the circular dated 16-11-2009 and order dated 26.11.2009 of the High Court. Such compliance on your part would also involve:

(i) withdrawing the plea against such a contest wherever taken in the cases pending before the MACT, and issue appropriate instructions to their respective lawyers and the operating officers within 7 days;

(ii) with respect to all appeals pending before the High Courts on this point, issuing instructions within 7 days to the respective operating officers and the counsel to withdraw the contest on this ground which would require identification of the number of appeals pending before the High Courts (whether filed by the claimants or the insurers) on this issue within a period of 2 weeks and the contest on this ground being withdrawn within a period of four weeks thereafter;

(iii) with respect to the appeals pending before the Hon'ble Apex Court, informing, within a period of 7 days, their respective Advocates-on- Record about the IRDA Circulars, for appropriate advice and action. Your attention is also drawn to the discussions in the CEOs meeting on

26.11.2009, when it was reiterated that insurers must take immediate steps to collect statistics about accident claims on the above subject through a central point of reference decided by them as the same has to be communicated in due course to the Hon'ble High Court. You are therefore advised to take up the exercise of collecting and collating the information within a period of two months to ensure necessary & effective compliance with the order of the Court. The information may be centralized with the Secretariat of the General Insurance Council and also furnished to us.

IRDA requires a written confirmation from you on the action taken by you in this regard.

This has the approval of the competent authority.

Sd/-
(Prabodh Chander)
Executive Director."
(emphasis added)

26. In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act policy" stands on a different footing from a "Comprehensive/Package Policy". As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has commanded the

> insurance companies stating that a "Comprehensive/Package Policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act policy" which admittedly cannot cover a third-party risk of an occupant in a car. But, if the policy is a "Comprehensive/Package Policy", the liability would be covered. These aspects were not noticed in the case of *Bhagyalakshmi* (supra) and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same.

20. Further, the Hon'ble Supreme Court in case of **Jagtar Singh alias Jagdev Singh v. Sanjeev Kumar and Others** reported in **(2018) 15 SCC 189** while relying upon the judgment of **Balakrishnan** (supra) has held thus :

> "1. In this appeal, by special leave, the appellant calls in question the legal propriety of the order dated 18-8-2010, passed by the High Court of Punjab & Haryana at Chandigarh in *United India Insurance Co. Ltd. v. Sanjeev Kumar, 2010 SCC OnLine P&H 7132*, whereunder the High Court has

> dislodged the finding of the Tribunal and made the owner liable after enhancing the amount of compensation. The insurer has been absolved on the ground that the appellant was a gratuitous passenger in the car.
>
> 2. It is submitted by Mr. Yadunandan Bansal, learned counsel appearing for the appellant that the controversy is covered by the two-Judge Bench decision in *Balakrishnan* (supra) wherein the Court has held thus (SCC PP. 743-44, paras 24-26)................
>
> 3. In view of the aforesaid, we think it appropriate to set aside the judgment and order passed by the High Court and remit the matter for consideration whether the policy in question is a “comprehensive/ package policy” or exclusively an “Act policy”. After such consideration it shall pass a reasoned order. Needless to say, if any other contention is available to the insured, he will be at liberty to raise the same before the High Court.”

21. In view of above facts and circumstances of the case and the material available on record that undisputedly the policy issued for offending vehicle was a 'Comprehensive Policy' and in the light of law laid down by Hon'ble Supreme Court in the aforementioned cases, we are of the considered view that the risk of occupant of offending vehicle i.e. deceased was covered. Hence, the submission made by learned counsel for the appellant/Insurance Company that there is no coverage of

the risk of the deceased is also not sustainable and it is hereby repelled.

22. For the foregoing reasons, we do not find any merit in this appeal or any tenable ground calling interference in the impugned award. The appeal fails and it is hereby dismissed.

Sd/-	Sd/-
(P. R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	**Judge**

Yogesh